

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHEASTERN DIVISION

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| Branden Thurman Clark, |) | |
| |) | |
| Plaintiff, |) | ORDER ADOPTING REPORT |
| |) | AND RECOMMENDATION |
| vs. |) | |
| |) | Case No. 3:06-cv-39 |
| Grand Forks County Correctional Center, |) | |
| Gary Gardner, Administrator, |) | |
| Jerry Wilson, Correctional Officer, and |) | |
| Judy Senne, Correctional Officer, |) | |
| |) | |
| Defendants. |) | |

This Court is in receipt of a Report and Recommendation from Magistrate Judge Karen K. Klein (doc. #9). On July 7, 2006, the Magistrate Judge conducted a 28 U.S.C. § 1915A initial review of Plaintiff Clark's complaint, and filed an Order regarding the initial review (doc. #8).

The Order stated, in part:

In his original and amended complaints, Clark fails to identify the capacity in which he is suing the defendants. For this reason, the court shall interpret the complaint against all of the defendants as if they were acting in their official capacity. Based upon the Eleventh Amendment, this entire action should be dismissed for failure to state a claim upon which relief can be granted. However, this court will allow Clark 30 (thirty) days to amend his complaint, properly identifying the defendants in their individual capacity. The clerk is directed to send Clark the appropriate forms for making these amendments. If Clark fails to file a third amended complaint, the magistrate judge will recommend dismissal of Clark's action.

When Clark originally filed his complaint, he listed his address as the Tri-County Corrections Facility in Crookston, Minnesota. In subsequent filings, his pleadings listed an address at the James River Correctional Center ("JRCC") in Jamestown, North Dakota. At the Magistrate

Judge's request, the District Court Clerk's Office mailed copies of the July 7, 2006 Order to both the Tri-County Corrections Facility and JRCC. The Order mailed to JRCC was returned as undeliverable. As the Order sent to the Tri-County Corrections Facility was not returned, Magistrate Judge Klein assumed that the Order was either delivered, or forwarded, to Clark.

The Prison Litigation Reform Act complaint packet provided to inmates warns that a petitioner must keep the Court updated of his or her address, or the Court may dismiss petitioner's case. Clark has not notified the court of any change in his address, and the Court has no additional knowledge regarding Clark's location. Clark has not complied with the Magistrate Judge's July 7, 2006 Order to submit a third amended complaint. Further, the Magistrate Judge has made all reasonable attempts to ensure Plaintiff received a copy of the Order.

Based on these facts, the Magistrate Judge recommended that Plaintiff's case be dismissed. Upon review of the record, this Court adopts the Report and Recommendation of the Magistrate Judge in its entirety. The case is hereby **DISMISSED**.

IT IS SO ORDERED.

Dated this 12th day of September, 2006

/s/ Ralph R. Erickson
Ralph R. Erickson, District Judge
United States District Court